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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,239	03/06/2004	Eliot Geeting	0538-01	2039

21704 7590 03/19/2007  
LAW OFFICES OF ERIC KARICH  
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MANSFIELD, TX 76063

EXAMINER
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MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,239	<b>Applicant(s)</b> GEETING, ELIOT	
	<b>Examiner</b> Fenn C. Mathew	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>03162004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has claimed that the device is secured at a desired height using a base in independent claim 11. Dependant claim 12 discusses a user gripping the base and moving the base in a plurality of directions. This appears to contradict the language of claim 11, since a user holding a device cannot be considered as securing the device at a desired height. Examiner is unable to ascertain the scope of the claim, and thus is precluded from applying art to claim 12. Appropriate clarification or correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Dignard et al. (U.S. 4,662,630). Dignard discloses a striking target device comprising a target body (14) with an inherent main striking area and pivot striking area, a base (49),

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and means for pivotally mounting the target body (45) such that the striking area is capable of remaining on a first plane, but pivotable on an axis to a different plane when struck in the pivot striking area. (Note if pin (41) is removed, base can rotate freely).

Referring to claim 4, Dignard discloses a device where the pivotal move would be visually apparent to a user. Referring to claim 5, as best understood, Dignard discloses a main striking area on an axis and a pivot striking area extending outwardly from the axis.

5. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Hoffman (U.S. 5,254,062). Hoffman discloses a target body with a striking surface, a suction cup, and as broadly construed, handgrip means where the suction cup acts as a soft non-slip stop for handholding the device and as a means for mounting the device on a smooth surface.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dignard. Dignard teaches the claimed structural limitations. The method steps as disclosed are considered obvious as steps one would normally perform when utilizing

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the device. The feature of having additional units is considered obvious, as it has been held that the mere duplication of parts only involves routine skill in the art.

8. Claims 2-3, and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dignard in view of Warshauer (U.S. 6,033,348). Dignard teaches the claimed invention, including a cam tube, cam follower and guide tube and tension means.

Dignard does not specifically teach having the tension means between the tube and follower. Warshauer teaches the desirability of placing the tension means between the tube and follower in order to aid in providing resistance to striking. In view of the teachings of Warshauer, it would have been obvious to one of ordinary skill in the art at the time of invention to provide Dignard with tension means in order to provide resistance to striking. As best understood, the tension means provide flex means allowing the device to flex across the axis. Referring to claims 7 and 8, and best understood, Dignard teaches a flex lock (41) positioned on the means for pivotally mounting.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dignard in view of Prince (U.S. 4,491,316). Dignard teaches the claimed invention except for audible feedback that differs depending on where you strike the target. Prince teaches in an analogous device the desirability of having differing audible feedback depending on where you strike a target. It would have been obvious to one of ordinary skill in the art at the time of invention to provide Dignard with audible feedback as taught by Prince in order to provide an indication of accuracy and location of strikes.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



F.C. Mathew  
March 16, 2007